CHUA CHOONG YIN

v.

TAN BOON BAK TRADING SDN BHD & ANOR

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
HAIDAR MOHD NOOR JCA
[CIVIL APPEAL NO: W-01-39-1999]
20 MAY 2002

CIVIL PROCEDURE: *Appeal - Record of appeal - Failure to state skeletal grounds of appeal and omission to state events not favourable in Chronology of Events - Inclusion of exhibits prohibited by court order - Whether there was non-compliance of Practice Direction No. 3 of 1992 and rr. 18(4)(c) & 18(6) Rules of the Court of Appeal 1994 - Whether appeal should be dismissed*

The appellant appealed against the dismissal of his employment with the first respondent which was held to be with just cause and excuse by the second respondent, *ie*, the Industrial Court. The first respondent, however, raised the following preliminary issues. Firstly, the appellant did not comply with Practice Direction No. 3 of 1992 because he failed to state the skeletal grounds of appeal and omitted to mention events not favourable to him in the Chronology of Events. Secondly, the appellant did not comply with rr. 18(4)(c) and 18(6) of the Rules of the Court of Appeal 1994 ('RCA') when he included in his appeal records two prohibited exhs. CCY16 and CCY17 in defiance of a court order dated 17 September 1997.

Held:
Per Siti Norma Yaakob JCA

[1] Practice directions do not have the force of law but they are created for a specific purpose, namely, to regulate a systematic and consistent procedure governing the filing of an appeal. For that reason, they have to be adhered to otherwise chaos and uncertainty in the filing of the appeal records shall prevail. (p 363 a)

[2] Practice Direction No. 3 of 1992 which was issued by the then Supreme Court to regulate the procedure of filing a Chronology of Events to that court, has, subject to some modifications, been adopted by this court to apply *mutatis mutandis* from 24 June 1995 as Practice Direction No. 1 of 1995. Under that Practice Direction, an appellant or applicant has to

file seven copies of the Chronology of Events which has taken place from the time the action or application is filed in the High Court to the date the records of appeal are filed with the registrar of this court. The Chronology of Events should also contain the skeletal grounds of appeal as prescribed by "Annexure A" to the said Practice Direction. (p 362 c-e)

[3] Whilst the appellant attempted to give an explanation as to his failure to state the skeletal grounds of appeal in his Chronology of Events, no submission was made as to why he had omitted to mention events not favourable to him. (p 363 c)

[4] The appellant had included in his appeal records the prohibited exhs. CCY16 and CCY17 in utter disregard to the court order dated 17 September 1997. That was a clear breach of r. 18(4)(c) RCA. Further, despite being put on notice by the first respondent that the inclusion of the said exhibits was in defiance of the said court order, the appellant insisted on including them and the first respondent's objection did not appear in the appeal records as required under r. 18(6) RCA. (p 363 d-f)

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu telah merayu terhadap pemecatan beliau daripada pekerjaannya dengan responden pertama yang mana diputuskan telah dilakukan dengan sebab dan alasan yang adil oleh responden kedua, iaitu Mahkamah Perusahaan. Responden pertama namun begitu, telah membangkitkan isu-isu awal yang berikut. Pertamanya, perayu telah tidak mematuhi Amalan Arahan No. 3 Tahun 1992 kerana beliau gagal untuk menyatakan rangka alasan-alasan rayuan dan tertinggal untuk menyatakan peristiwa-peristiwa yang tidak memihak beliau di dalam Kronologi Peristiwa-Peristiwa. Keduanya, perayu tidak mematuhi kk. 18(4)(c) dan 18(6) Kaedah-Kaedah Mahkamah Rayuan 1994 ('KMR') ketika beliau memasukkan di dalam rekod-rekod rayuannya dua ekshibit yang dilarang CCY16 dan CCY17 bertentangan dengan perintah mahkamah bertarikh 17 September 1997.

Diputuskan:
Oleh Siti Norma Yaakob HMR

[1] Arahan-arahan amalan tidak mempunyai kuasa undang-undang tetapi ianya diwujudkan bagi tujuan yang khusus, iaitu, untuk menyelaraskan satu prosedur yang sistematik dan konsisten yang menguasai pemfailan sesuatu rayuan. Oleh itu, mereka haruslah dipatuhi, jika tidak, ketidakpastian dan keadaan kucar-kacir dalam pemfailan sesuatu rekod rayuan akan berlaku.

[2] Arahan Amalan No. 3 Tahun 1992 yang mana telah dikeluarkan oleh Mahkamah Agong ketika itu untuk menyelaraskan prosedur pemfailan Kronologi Peristiwa-Peristiwa kepada mahkamah itu, telah (tertakluk kepada beberapa pengubahsuaian) diterima pakai oleh mahkamah ini bagi memakai *mutatis mutandis* daripada 24 Jun 1995 sebagai Arahan Amalan No. 1 Tahun 1995. Di bawah Arahan Amalan itu, perayu atau pemohon haruslah memfailkan tujuh salinan Kronologi Peristiwa-Peristiwa yang telah berlaku daripada masa tindakan atau permohonan tersebut difailkan dalam Mahkamah Tinggi sehingga tarikh rekod-rekod rayuan difailkan dengan pendaftar mahkamah ini. Kronologi Peristiwa-Peristiwa tersebut haruslah juga mengandungi rangka alasan-alasan rayuan sepertimana yang ditetapkan oleh "Lampiran A" kepada arahan amalan tersebut.

[3] Sementara perayu cuba untuk memberikan penjelasan berhubung dengan kegagalan beliau untuk menyatakan rangka alasan-alasan rayuan tersebut di dalam Kronologi Peristiwa-Peristiwa beliau, tiada hujahan dibuat berhubung dengan mengapa beliau tertinggal untuk menyebut mengenai peristiwa-peristiwa yang tidak memihak kepada beliau.

[4] Perayu telah memutuskan di dalam rekod-rekod rayuan beliau ekshibit-ekshibit yang dilarang CCY16 dan CCY17 tanpa menghiraukan perintah mahkamah bertarikh 17 September 1997. Itu adalah keingkaran yang jelas terhadap k. 18(4)(c) KMR. Selanjutnya, meskipun telah diberikan notis oleh responden pertama bahawa kemasukan ekshibit-ekshibit tersebut adalah bertentangan dengan perintah mahkamah tersebut, perayu masih meneruskan memasukkannya dan bantahan responden pertama tidak terdapat di dalam rekod-rekod rayuan sepertimana yang dikehendaki di bawah k. 18(6) KMR.

[Rayuan ditolak.]

Case(s) referred to:
Ling Siok Seng v. Ting Sieh Chung [1998] 4 CLJ 169 ***(refd)***
Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor [1996] 2 CLJ 628 ***(refd)***

Legislation referred to:
Rules of the Court of Appeal 1994, r. 18(4)(c), (6), (10)
Rules of the High Court 1980, O. 53, O. 55 r. 1(2), form 9

For the appellant - Kuppusamy (Tony Dhana); M/s Tony Dhana & Co
For the 1st respondent - TJ Su (PY Au Yong); M/s Cheah Teh & Su

[Appeal from High Court, Kuala Lumpur; Motion No: R8-25-83-1991]

Reported by Usha Thiagarajah

a

JUDGMENT

Siti Norma Yaakob JCA:

This appeal arose from the refusal of the High Court to grant an order of *certiorari* to the appellant to quash the award of the 2nd respondent that upheld the appellant's dismissal from the employment of the 1st respondent to be for just cause or excuse. However before us, the 1st respondent raised two preliminary issues namely non-compliance by the appellant with:

b

(1) Practice Direction No. 3 of 1992 and

c

(2) Rules 18(4)(c) and 18(6) of the Rules of the Court of Appeal 1994 ("the Rules").

We had agreed with the submissions of Mr. T.J. Su, counsel for the 1st respondent and upheld the preliminary objections but to appreciate them, we need to go back and trace all the proceedings that were commenced by the appellant in the courts below.

d

In 1987, following a domestic enquiry held by the 1st respondent on 4 June of that year, the appellant was informed by letter bearing the same date, that he had been dismissed from his employment as a credit control officer with the 1st respondent on three founded charges of:

e

(1) persistently contravening credit control procedures and instructions.

(2) acting without authority by instructing Messrs. C. S. Tang & Co., a firm of solicitors, to cease legal action against a debtor of the 1st respondent.

f

(3) making a false mileage claim based on a rate that he was not entitled to.

In disputing his dismissal, the appellant proceeded to make representations to the Industrial Relations Office which referred the matter to the 2nd respondent and on 31 October 1990, by its Award No. 291 of 1990, the 2nd respondent upheld the dismissal and confirmed that it was for just cause or excuse.

g

Dissatisfied, the appellant filed a judicial review action in the High Court in Originating Motion R8-25-129-90 ("the first action") and obtained leave *ex parte* to apply for an order for *certiorari* to quash the award of the 2nd respondent.

h

On 13 June 1991, the first action was dismissed with costs on the preliminary objection that the appellant's statement pursuant to O. 55 r. 1(2) of the Rules of the High Court 1980, did not state the relief sought by him.

i

The appellant did not appeal against this order but instead filed a fresh action Originating Motion R8-25-83-91 ("the second action") and by a notice of motion dated 20 June 1991, the appellant prayed for an extension of time to apply once again for leave to apply for an order for *certiorari* and for such leave itself.

The application for extension of time was granted on 13 January 1994, as well as leave to apply for an order of *certiorari* but costs was ordered against the appellant in favour of the 1st respondent.

The 1st respondent pursued the matter further to the then Supreme Court but its appeal was dismissed with no order as to costs on 19 September 1995.

Back in the High Court, the second action was heard on 25 September 1996, when the 1st respondent objected to the admissibility of two further affidavits filed by the appellant without leave of court. The court allowed the appellant to withdraw the two further affidavits with liberty to file for leave to file further affidavits. The appellant did just that by way of a notice of motion dated 21 October 1996, for leave to file a further affidavit and to use certain exhibits therein during the hearing of the second action.

The notice of motion was struck off with costs on 28 April 1997, as counsel for the appellant failed to appear at the hearing. The appellant then applied to reinstate the notice of motion and this was granted on 10 June 1997, and costs of RM500 was ordered to be paid to the 1st respondent.

At the hearing of the reinstated notice of motion on 17 September 1997, an order was made allowing the appellant to use three exhibits identified as CCY18 (including CCY18A, CCY18B and CCY18C), CCY19 and CCY20 to be used at the hearing of the second action which was fixed for 7 January 1999, with directions that the parties file their respective written submissions and bundle of authorities into court one month before the hearing date. The 1st respondent complied with the directions but the appellant only did so well after the one month's period set by the court order.

The 1st respondent's written submissions raised two preliminary objections based on the failure of the appellant to:

(1) comply with O. 53 and Form 9 of the Rules of the High Court 1980; and

(2) state with sufficient particularity in the intitulment of the second action the statute for which the application for an order of *certiorari* is sought.

This prompted the appellant to apply to amend the substantive motion in the second action and this was heard together with the second action on 7 January 1999, where the application to amend was granted with costs to the 1st respondent.

The second action as amended was finally heard on 9 April 1999, when the High Court dismissed it with costs. Hence the appellant's present appeal before us.

Having outlined the tedious manner in which proceedings in this appeal commenced and was allowed to continue, we now turn to the first of the preliminary objections raised by the 1st respondent namely the appellant's failure to comply with Practice Direction No. 3 of 1992.

That Practice Direction which was issued by the then Supreme Court to regulate the procedure of filing a Chronology of Events to that court, has, subject to some modifications been adopted by this court to apply *mutatis mutandis* from 24 June 1995 as Practice Direction No. 1 of 1995. Under that Practice Direction, an appellant or applicant has to file seven copies of the Chronology of Events which had taken place from the time the action or application was filed in the High Court to the date the records of appeal are filed with the registrar of this court. The Chronology of Events should also contain the skeletal grounds of appeal as prescribed by "Annexure A" to the aforesaid Practice Direction.

Objections on non-compliance fell into the following categories.

(1) No skeletal grounds or appeal have been stated by the appellant in his chronology.

(2) Only events which were favourable to him were disclosed but not those which put him in a bad light.

(3) A detailed chronology of events which occurred from 21 January 1997, to 9 April 1999, has also been omitted.

We had perused the chronology and found the allegations of non-compliance to be founded.

In rebuttal Mr. Tony Dhana, counsel for the appellant maintained that the appellant is only bound by r. 18(10) of the Rules which requires that only a chronology of events need be submitted together with the record of appeal and no mention is made that a skeletal ground of appeal has to be stated in the chronology as well. As such the appellant has done all that he is required to do under the Rules.

Whilst we appreciate that practice directions do not have the force of law, they are created for a specific purpose namely to regulate a systematic and consistent procedure governing the filing of appeal records. For that reason they have to be adhered to otherwise chaos and uncertainty in the filing of appeal records shall prevail. See the cases of *Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor* [1996] 2 CLJ 628 and *Ling Siok Seng v. Ting Sieh Chung* [1998] 4 CLJ 169.

Whilst the appellant attempted to give an explanation as to his failure to state the skeletal ground of appeal in his chronology, no submission was made why he had omitted to mention events not favourable to him particularly the events to show why the substantive motion in the second action took more than 2 1/2 years from the date of its filing to be heard.

The second objection raised by the 1st respondent relates to the appellant's utter disregard to the court order dated 17 September 1997, when filing his memorandum of appeal. Under that court order, the appellant was only allowed to use three exhs. CCY18 to CCY20 (including exhs. CCY18A, CCY1815 and CCY18C) during the hearing of substantive motion in the second action but not exhs. CCY16 and CCY17. Despite such an order for which no appeal was lodged by the appellant, he had included in his appeal records the prohibited exhs. CCY16 and CCY17 as well, a clear breach of r. 18(4)(c) of the Rules. By letter dated 21 June 1999, solicitors for the 1st respondent pointed out to the appellant that the inclusion of exhs. CCY16 and CCY17 in his index of documents was in defiance of the court order but despite being put on notice, the appellant insisted on including the offending two exhibits and the fact of the 1st respondent's objection does not appear in the appeal records as required under r. 18(6) of the Rules.

Rule 18(4) requires the appellant to attach to his memorandum of appeal copies of the proceedings in the High Court including:

> (c) copies of all affidavits read and all documents put in evidence in the High Court so far as they are material for the purposes of the appeal, and subject to rule 101 if such documents are not in the national language, copies of certified translation thereof;

Rule 18(6) states that a draft index of documents to be included in the appeal record shall be sent by the appellant's solicitors to the solicitors of the 1st respondent to enable the latter to object to the inclusion or exclusion of any document. However the 1st respondent's objection lies with the following text of that particular sub-rule which reads as follows:

> Where in the course of preparation of the record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists on it being included, the record, as finally printed or typed shall, with a view to the subsequent adjustment of the costs of and incidential to such documents, indicate, in the index of papers, or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

Mr. Tony Dhana took a simplistic approach to the objection by asking us to ignore the offending exhibits and to rule against their use. We considered that was not the proper approach to take particularly when he had been put on notice that the inclusion of the two offending exhibits was contrary to the court order. We also say that his refusal to acknowledge the objection was a clear breach of r. 18(6) for which no explanation was forthcoming from him.

Based on the two preliminary objections for which we entirely endorse, we had concluded that this appeal was not properly brought before us and on that finding we had dismissed it with costs and ordered that the deposit be paid to the 1st respondent to account of its taxed costs.